IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2620 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ. STATE ROAD TRANSPORT CORPORATION

Versus

STATE TRANSPORT WORKERS UNION

Appearance:

MR HARDIK C RAWAL for the Petitioner.

RULE SERVED for Respondent No. 1

MR MUKESH H RATHOD for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/11/2003

ORAL JUDGEMENT

The petitioner, Gujarat State Road Transport Corporation, has filed this petition under Article 227 of the Constitution of India, challenging the order of the Industrial Tribunal dated 10th May, 1991 passed in

Reference (IT) No.203 of 1989.

The dispute in question was referred to the Industrial Tribunal, Ahmedabad, by the Deputy Labour Commissioner, Ahmedabad, for adjudication and accordingly, it was numbered as Reference (IT) No.203 of 1989. The concerned workman was appointed as a Conductor and on the relevant day, it was found that even though he had collected fare of 50 Ps. from a passenger, he had not given ticket to such passenger. The concerned workman was subjected to departmental enquiry and the competent authority dismissed him from service. The concerned workman, thereafter, preferred a departmental appeal and the Appellate Authority of the S.T. Corporation reduced the said penalty by reinstating him in service, and, ultimately, imposed the penalty of placing the concerned workman to the minimum of his pay scale. The workman was still not satisfied with the reduced penalty and, therefore, he raised the Industrial Dispute.

The Labour Court, after considering the facts and circumstances of the case, came to the conclusion that the penalty imposed by the Disciplinary Authority is disproportionate to the charges levelled and proved against the concerned workman and it interfered with the said penalty, by imposing the penalty of withholding the increment for a period of six months, without any future effect. The Labour Court has also passed an order directing payment of 50% back wages for the intervening period. It is the said order of the Tribunal which is impugned in this petition, at the instance of the S.T. Corporation.

At the time of admitting the matter, this Court stayed the order of payment of back wages.

At the time of hearing of this petition, it was argued by Mr.Raval, learned Advocate for the petitioner, that this is not a case in which any back wages are required to be given to the concerned workman. He submitted that the concerned workman misappropriated certain amount, may be negligible. The Appellate Authority of the Corporation has itself taken a lenient view of the matter, by reinstating the concerned workman, and, ultimately, imposed the penalty of placing the concerned workman to the minimum of his pay scale. The Labour Court, however, while exercising the powers under Section 11-A of the I.D. Act, reduced the penalty to that of withholding the increment for a period of six months, without any future effect.

Mr.Devnani, on the other hand, submitted that since the Labour Court has properly used its discretion after properly considering the nature of the misconduct, this Court, in its exercise of the extraordinary jurisdiction under Article 227 of the Constitution of India, should not interfere with the impugned order of the Labour Court.

I have heard learned Advocates of both the sides. I have gone through the default card, which shows that on three occasions, the petitioner has committed similar type of misconduct. Regarding such cases, there is an order of dismissal. This Court is not aware as to what has happened to that case.

So far as the facts of the present case are concerned, looking to the nature of the misconduct, the Labour Court has given cogent reasons for reducing the penalty imposed by the appellate authority and the Labour Court has thought it fit to reduce the penalty to that of withholding the increment for a period of six months, without any future effect. Considering the reasoning of the Labour Court, in my view, this is not a case in which, while exercising the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India, this Court should interfere with the said order of the Labour Court.

However, when a misconduct is proved against the concerned workman, in my view, this is not a case in which any back wages should have been awarded to the concerned workman. Considering that aspect of the matter, while confirming the order of the Tribunal in connection with the substitution of the penalty imposed by the Appellate Authority of the Corporation, the order of giving back wages to the extent of 50% is quashed and set aside. The petition is accordingly partly allowed to the aforesaid extent, with no order as to costs. Rule is accordingly made absolute.

Whatever benefit the respondent-workman is entitled as per the order of the Labour Court except the benefit of back wages for the intervening period, shall be given by the Corporation expeditiously. It is clarified that except setting aside the order of the Tribunal regarding back wages, rest of the order of the Tribunal is kept intact.

14th November, 2003 (P.B. Majmudar, J.)

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(apj)